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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/033,580	12/28/2001	Gary R. Eddy	EDD002USPTO1	9162
23403	7590	03/25/2004	EXAMINER	
SHERRILL LAW OFFICES 4756 BANNING AVE SUITE 212 WHITE BEAR LAKE, MN 55110-3205			MARSH, STEVEN M	
		ART UNIT	PAPER NUMBER	
		3632		

DATE MAILED: 03/25/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/033,580	EDDY, GARY R.	
	Examiner	Art Unit	
	Steven M Marsh	3632	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 12 December 2003.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1,3-16 and 18-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1,3-16 and 18-22 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This is the fourth office action for U.S. Application 10/033,580 for an Eaves Trough Support Bracket filed by Gary R. Eddy on December 28, 2001. Claims 2 and 17 have been canceled.

Claim Rejections - 35 USC § 112

Claim 22 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicant claims that a primary rib formed within the main beam and the strut, longitudinally overlaps the first leg and the second leg. The rib (131) disclosed by Applicant does not appear to overlap the first or second leg. This claim has been examined to the best extent possible.

Claim Rejections - 35 USC § 103

Claims 1, 3-16 and 18-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ramser in view of Schwartz, and in further view of Odekirk. Ramser discloses an eaves trough support bracket that can be formed from a unitary planar metal blank, with a main beam (7) that has longitudinally spaced distal and proximal ends, laterally spaced first and second edges, and transversely spaced first and second surfaces. There is a connection element (11) extending in a first transverse direction from the distal end of the main beam and a hook (12) extending in the first transverse direction and a second longitudinal direction from the proximal end of the main beam

with a concavity open (18) in a second transverse direction. First and second legs (8) extend in a second transverse direction from the first and second edges of the main beam, respectively, and have proximal longitudinal ends substantially transversely aligned with the proximal end of the main beam. The bracket has a laterally extending first bend line (15) along a transition line from the main beam to the connection element and a laterally extending second bend line along a transition line from the main beam to the hook.

The hook has a transversely extending shaft portion (13) with a first end connected to the proximal end of the main beam and a second end extending in the first transverse direction from the proximal end of the main beam, a hooking portion with a first end connected to the second end of the shaft and a second end extending away from the distal end of the main beam in a second longitudinal direction from the second end of the shaft, and a transversely extending extension portion (14) with a first end connected to the second end of the hooking portion and a second end extending in the second transverse direction from the second end of the hooking portion. There is a longitudinally aligned hole (18) through each of the shaft and extension portions of the hook effective for accommodating partial passage of a mechanical fastener (17) throughout the holes. The bracket also has a fourth and fifth bend line along transition lines from the main beam to the first and second legs, respectively.

Ramser does not disclose a bracket wherein the main beam, first leg, and second leg define a concavity accessible from the first transverse direction whereby the support bracket could be transversely nestable, although it is possible that the tabs (9)

could be displaced to make the bracket nestable. Scwhartz discloses a support bracket with a main beam (12), as well as first and second legs (18) that define a concavity accessible from the first transverse direction. The bracket can fit over a stud or it could be transversely nestable. It would have been obvious to one of ordinary skill in the art at the time of the present invention to have provided a leg arrangement such as the one taught by Schwartz, in place of the leg arrangement that includes flanges as taught by Ramser, for the purpose of allowing the bracket to fit over an object or be nestable with an object. Nor does Ramser disclose a support bracket with first and second legs that have a height that tapers so that the height at the center is half the height at the proximal longitudinal end of the leg. However, the support bracket taught by Schwartz does teach legs with a height that decreases in a tapered fashion. The exact ratio between the longitudinal end of the leg and the center is a matter of engineering preference and would have been obvious to one of ordinary skill in the art at the time of the present invention.

Ramser in view of Schwartz does not disclose a connection element with a strut extending in a transverse direction from the beam and a tab extending in a second longitudinal direction from the strut and transversely spaced from the main beam. Nor dose Ramser in view of Schwartz disclose ribs located at the bend lines for strengthening the bracket. Odekirk discloses an aluminum gutter support bracket with a main beam having longitudinally spaced distal and proximal ends, laterally spaced first and second edges, and transversely spaced first and second surfaces. There is a connection element (60) extending in a first transverse direction from the distal end of

the main beam and transversely spaced from the beam and a hook at a second longitudinal direction from the proximal end of the main beam. The connection element has strut (62) with a first transverse end connected to the distal end of the main beam and a second transverse end extending in a first transverse direction from the distal end of the main beam.

There is a tab (64) with a longitudinal end connected to the second transverse end of the strut and a second transverse end extending in a second longitudinal direction from the second transverse end of the strut, with a laterally extending third bend line along a transition line from the strut to the tab. Odekirk also discloses ribs located at the bend lines of the bracket (see fig. 2) for strengthening the bracket. It would have been obvious to one of ordinary skill in the art at the time of the present invention to have substituted the connection element taught by Ramser in view of Schwartz, with the connection element taught by Odekirk, for the purpose of providing a connection element that could support a gutter with a different configuration.

It also would have been obvious to one of ordinary skill in the art at the time of the present invention to have provided ribs at the bend lines of the bracket taught by Ramser in view of Schwartz, as taught by Odekirk, for the purpose of strengthening the bracket. The specific location of the ribs with respect to each other is a matter of engineering preference and would have been obvious to one of ordinary skill in the art at the time of the present invention.

Ramser in view of Schwartz, and in further view of Odekirk does not specifically disclose a bracket wherein the longitudinal ends of the first and second legs

independently have a transverse height of about .5 to 1.5 inches, but that is a matter of engineering preference and would have been obvious to one of ordinary skill in the art at the time of the present invention. Ramser in view of Schwartz, and in further view of Odekirk also fails to specifically disclose the distance between the main beam and the longitudinally extending tab, but that too is a matter of engineering preference and would have been obvious to one of ordinary skill in the art at the time of the present invention.

Response to Arguments

Applicant's arguments filed December 12, 2003 have been fully considered but they are not persuasive. Applicant first argues that the primary rib (131) overlaps the first leg. Overlap is defined as "to extend over or past and cover a part of" by Merriam-Webster's Collegiate Dictionary (10th Edition). The rib (131) shown in fig. 1 is between 20 and 40 and does not appear to extend to or cover the first leg.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

In response to applicant's argument that Odekirk and Schwartz nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the

applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Ramser, Odekirk, and Schwartz disclose brackets for hanging objects and Applicant disclose a bracket used for hanging objects.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Schwartz and Ramser both disclose support brackets. It would have been obvious to one of ordinary skill in the art to have provided an arrangement absent the tabs taught by Ramser as taught by Schwartz, for allowing the bracket to fit over something. The tabs of Ramser

could also be displaced to make that bracket nestable. It also would have been obvious to one of ordinary skill in the art to have used the teaching of Odekirk to provide ribs at the bend lines of the bracket taught by Ramser in view of Schwartz. The specific location of the ribs with relation to each other is a matter of engineering preference.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven Marsh whose telephone number is (703) 305-0098. The examiner can normally be reached on Monday-Friday from 8:00AM to 4:30 PM. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone

Art Unit: 3632

number is (703) 308-2168. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3597.

SM
Steven Marsh

March 21, 2004



LESLIE A. BRAUN
SUPERVISORY PATENT EXAMINER